

MARK SHIELDS,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-19-801-D
)	
R.C. SMITH, Warden, <i>et al.</i> ,)	
)	
Respondents.)	

This matter is before the Court for review of the Report and Recommendation [Doc. No. 5] issued by United States Magistrate Judge Gary M. Purcell pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Upon initial screening, Judge Purcell recommended that the Court: (1) deny Petitioner's motion for leave to proceed *in forma pauperis*; (2) order the payment of the \$5.00 filing fee within 20 days; and (3) dismiss this action without prejudice if Petitioner fails to pay the \$5.00 filing fee.

In his objection filed on September 20, Petitioner objected to paying the \$5.00 filing fee, asserting that he would have to “beg his 86-year-old mother for money from her Social Security check.” [Doc. No. 6]. Petitioner asserted that if he is not granted leave to proceed

in forma pauperis, he would have to wait until the first of October to ask his mother for the \$5.00 to pay the filing fee. *Id.* On September 23, 2019, Petitioner sent a letter to the Court, stating that if he is denied leave to proceed *in forma pauperis*, he will pay the filing fee “as soon as [he] can.” [Doc. No. 7]. Petitioner indicated, however, that he was in “institutional lockdown” and could “not at this time get a case manager to process a cash disbursement to the courts” until the lockdown is lifted. *Id.*

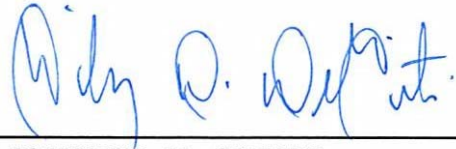
Upon *de novo* review of the issues presented, the Court concurs with Judge Purcell that Petitioner has sufficient funds in his account to pay the \$5.00 filing fee.¹ However, given the prison lockdown, 20 days may not be sufficient time to process a timely payment request.² Thus, the Court concludes that 30 days would allow sufficient time.

Accordingly, Judge Purcell’s Report and Recommendation is ADOPTED in part. Petitioner’s motion for leave to proceed *in forma pauperis* [Doc. No. 2] is DENIED. Petitioner shall pay the \$5.00 filing fee within 30 days from the date of this Order. If Petitioner fails to pay the filing fee within 30 days of the date of this Order or show good cause for nonpayment by that date, the Court, without further notice to Petitioner, will dismiss this action without prejudice.

¹ On August 23, 2019, Petitioner had a balance of \$1,287.01 in his institutional savings account. [Doc. No. 2 at 3, 10].

² The Court acknowledges that lockdowns are often unpredictable and may be indefinite; it does not appear, however, that the lockdown has impacted Petitioner’s ability to communicate with the Court or file legal documents.

IT IS SO ORDERED this 26th day of September 2019.



TIMOTHY D. DeGIUSTI
Chief United States District Judge